IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

CIVIL REVISION APPLICATION NO.152 OF 2005

Shri Bhimsha Rajb Bharale. ...Applicant.

Vs.

The State of Maharashtra & Ors. ...Respondents.

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Mr. Samer Kumbhakoni for the Applicant.
Mr. V. B. Sakhare, AGP for Respondent Nos.1 to 3.

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CORAM : DR. D.Y. CHANDRACHUD, J.

November 21, 2005.

P.C.:

Rule, by consent made returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent of Counsel and at their request taken up for hearing and final disposal.

The land of the applicant is stated to have been acquired by the Third Respondent for the construction of premises for the State Reserve Police. The land acquired admeasures 1 H. 20 Ares out of Gat No.23/1. The applicant filed an application under Section 18 of the Land Acquisition Act, 1894, for reference to the Civil Court. The application has been dismissed by the Special

Land Acquisition Officer on the ground that the applicant had sought a period of one month's time to pay Court fees and the Court fee stamp has not been affixed.

There is merit in the contention of the applicant that in view of the judgment of the Supreme Court in **Kashiram Namdeo Zambro vs. State of Maharashtra,** (1996) 1 SCC 289, the reason which has been set out in the impugned order of the SLAO is clearly unsustainable. In the aforesaid decision, the Supreme Court dealt with the issue as to whether the claimant is required pay court fee on an application under Section 18 and that question is answered in the negative with the following observations by the Supreme Court :

> "The only question that arises for consideration is whether the claimant is required to pay court fee on an application seeking reference under Section 18. We are at a loss to understand that a claimant is required to pay ad valorem court fee on an amount awarded by the Collector under Section 11 for seeking reference under Section 18. What is required is to make a written application with particulars envisaged under Section 18 (2) of the act, to the Collector requiring the matter to be

> referred to the civil Court to decide his objection regarding measurement of the land or the amount of compensation or the person to whom it is payable or the apportionment of the compensation awarded to the persons interested. The Act is a self-contained Code and it does not speak of payment of any court fee. It requires only that the application should be made within the limitation prescribed either in clause (a) or (b) of sub-section (2) of the Act. It is, therefore, clear that non-payment of the deficit court fee,though wrongly made by the appellant, is not necessary. The owner or person interested is not enjoined under law to pay any court fee on the application made under Section 18(1) seeking reference for determination of the compensation by the civil court etc. The civil court and the High Court, therefore, have committed grave error of law in rejecting the claim of the appellant for determination of the compensation."

In that view of the matter, the impugned order is clearly unsustainable and is accordingly quashed and set aside. The SLAO is directed to consider the application filed by the applicant

afresh in accordance with law. It is however, clarified that no opinion is expressed by this Court on the question as to whether the application is within the period of limitation and the SLAO shall deal with the application in accordance with law. The Civil Revision Application is accordingly disposed of.

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